

**IN THE COURT OF APPEAL OF TANZANIA
AT IRINGA**

(CORAM: RUTAKANGWA, J.A., LUANDA, J.A., And MJASIRI, J.A.)

IR.CRIMINAL APPLICATION NO. 1 OF 2012

**1. JAMES @ SHADRACK MKUNGILWA }
2. LAZARO S/O MKUNGILWAAPPLICANTS**

VERSUS

THE REPUBLIC..... RESPONDENT

**(Application for review of the Court of Appeal of Tanzania
atIringa)**

(Mbarouk, Massati, Oriyo, JJJ.A.)

**Dated 26th day of March, 2012
in
Criminal Appeal No. 214 of 2010**

RULING OF THE COURT

5th& 6th August, 2013

RUTAKANGWA, J.A.:

In this application brought under Rule 66 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules), the applicants are seeking the review of the Court's judgment in Criminal Appeal No. 214 of 2010 dated 26th March, 2012. Their appeal against a conviction for murder and a death sentence was dismissed by the Court.

The only ground fronted by the applicants for requesting the review as can be gleaned from their identical notices of motion and supporting

affidavits is found in paragraph 4 of their respective five-paragraph affidavits. Each is averring therein as follows:-

*"4. THAT, I decided to apply this application because I am believing that Hon. MBAROUK, J.A., Hon. MASSATI, J.A., and Hon. ORIYO J.A., in their decision which they delivered on the 26th March, 2012 at Iringa, they overlooked in law all aspects which benefited the applicant to win the appeal. I believe that if the full **bench court will review my appeal**, they will see all aspects which overlooked in law by the justices of the full court."*

[Emphasis is ours.]

The applicants had indicated that they did not wish to be present at the hearing of the application. However, they appeared in person and urged us to allow their application. They claimed that on a proper re-evaluation of the evidence it will be established that PW1 was not a truthful witness and some key witnesses never testified. It is clear to us that in imploring us to "**review**" their "**appeal**", the applicants are inviting us to re-hear their already conclusively determined appeal. But do we have the jurisdiction to

do so? The answer to this pertinent question lies in Rule 66 (1) upon which the application is premised.

Rule 66 (1) of the Rules reads as follows:-

"66-(1) The Court may review its judgment or order, but no application for review shall be entertained except on the following grounds-

- (a) the decision was based on a manifest error on the face of the record resulting in the miscarriage of justice; or*
- (b) a party was wrongly deprived of an opportunity to be heard; or*
- (c) the court's decision is a nullity; or*
- (d) the court had no jurisdiction to entertain the case; or*
- (e) the judgment was procured illegally, or by fraud or perjury.*

The respondent Republic was represented by Mr. OkokaMgavilenzi, learned State Attorney. Mr. Mgavilenzi opposed the application. He pressed us to dismiss the application as the sole ground

relied upon by the applicants in seeking the review of the Court judgment is not one of the five grounds stipulated in Rule 66 (1) of the Rules. What the applicants are seeking, he stressed, is a re-hearing of their appeal, which is not a function of the Court in review proceedings. On this he made reference to our decision in **Samson Matiga v. R.**(C.A.T.) Criminal Application No. 6 of 2011 (unreported). We entirely agree with him.

It is settled law that a review of the judgment of the highest Court of the land should be an exception. The review jurisdiction should be exercised in the rarest of cases and in the most deserving cases which meet the specific benchmarks stipulated in Rule 66 (1). A review application, therefore, should not be lightly entertained when it is obvious that what is being sought therein is a disguised re-hearing of the already determined appeal, as is obviously the case in these proceedings. Since the applicants have failed to meet, even remotely, the benchmarks for review under our laws, we are constrained to hold that we have no jurisdiction to grant the relief being sought by the applicants. It deserves, therefore, to be dismissed as urged by Mr. Mgavilenzi. We should observe in passing that all ten (10) review applications fronting an identical ground which came up for hearing during these sessions have been found to be patently

wanting in merit and were dismissed. We accordingly dismiss this application.

DATED at **IRINGA** this 5th day of August, 2013.

E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


M.A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL

